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AP/The Indianapolis Star photos |**Charles Nye**

**DEBATE:** Indiana Speaker of the House Brian Bosma, R-Indianapolis, left, shows his dismay as the House takes up second reading of HJR-3 while lead sponsor Rep. Eric Turner, R-Cicero, right, makes his last appeal to colleagues in Indianapolis on Monday. But the House, which is dominated by Republicans, voted 52-43 to pass an amendment by Rep. Randy Truitt, R-W. Lafayette, striking the second sentence from HJR-3.



**PROTEST:** Opponents of HJR-3 hold Freedom Indiana placards as they watch and listen to proceedings while standing outside the Indiana House of Representatives at the Indiana Statehouse in Indianapolis on Monday. The House voted 52-43 to strike the second sentence from the proposed constitutional amendment on marriage during second reading.

## Pence, others look to re-add HJR3's 2nd sentence

**Gay marriage amendment now moves to Indiana Senate.**

*By Rob Burgess  
Tribune night editor*

[Editor's note: This is the second in a two-part series exploring the state's ban of same-sex marriage. The first part, "Stuck in the middle; Long-term

Howard County LGBT couples discuss their experiences," was published Jan. 24.]

In his first public comments after an amended version of HJR3 passed the Indiana House of Representatives Tuesday, Gov. Mike Pence expressed dismay at the loss of the amendment's second sentence.

"Let me say I support traditional marriage," Pence told WISH-TV's Jim Shella in an interview aired Friday, "and I expressed support for the resolution that the legislature passed during the last session and considered at the outset of this session."

The version of the amendment which is now headed to the Indiana Senate's Judiciary Committee stipulates "only marriage between one man and one woman shall be valid or recognized as a marriage in Indiana." What was lost was the second sentence, which states "that a legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized."

Pence is not alone in his desire to see this second sentence re-added.

"These ... legislators knew by voting for the Motion to Amend [Tuesday] that the citizens of Indiana would not be able to vote this year to protect

marriage between one man and one woman,” pro-amendment group Advance America wrote on their website Tuesday. “Don’t be fooled by what these ... legislators say after today! Their vote speaks louder than their words!”

But what won’t be speaking louder, at least for the time being on this issue, is Pence.

“I’m gonna refrain from commenting on this referendum during the legislative process,” he told Shella.

Apparently following his lead are Speaker Brian Bosma (R-Indianapolis); HJR3’s author, Rep. Eric Turner (R-Cicero); Advance America; and the American Family Association of Indiana, none of which returned repeated interview requests for this story.

### **‘Substantially similar to ... marriage’**

In the same interview in which Pence told Shella he wanted to re-add HJR3’s second sentence he also said “we would all do well to resolve once and for all this year.”

If those now-excised words of HJR3 were supposed to bring greater clarity

to the issue, it is lost on Jennifer Wagner, who is charge of media and communications for anti-amendment group Freedom Indiana. She said Indiana's Defense of Marriage Act, which was passed in 2004, was identical to HJR3's first sentence.

"The first sentence of the amendment is identical to existing state law," she said in a phone interview last week. "It's already been tested in the courts and found to be legal, so why do we need an amendment? ... The second sentence is where we run into a lot of problems. ... [It] has left a lot of people wondering; OK, does that outlaw domestic partnerships? Does that outlaw civil unions? What does that do to people's health benefits if they have domestic partner benefits through an employer? Does that mean that private and public companies can't offer those benefits?"

That second sentence could be re-added once the Senate Judiciary Committee sends it to the full Senate floor for debate. Wagner said this part of the amendment was their major focus.

"It's important to note, this is not a gay marriage campaign," she said. "We're not fighting to promote gay marriage or have a law enacted that would legalize same-sex marriage. What we're doing is saying look, this amendment is poorly written. It goes in the opposite direction from where public opinion is going on these matters. And whether or not you want to

talk about whether marriage should be legal or illegal for same-sex couples, this amendment goes a step further and makes it so they don't have any legal protection under the laws."

Seventeen states and the District of Columbia have now legalized gay marriage. Wagner said the wording of HJR3 in its original form has caused confusion, even with some supporters of LGBT rights.

"They didn't do such a great job of writing [HJR3] in the first place, so there's a lot of confusion," she said. "I think a lot of confusion on the marriage equality side is people seeing coverage from surrounding states where that is the debate and thinking, oh we're having that conversation here, too. Also, what in the heck does 'substantially similar to marriage' mean?"

### **Legislating by amendment**

Indiana's constitution has only been amended a handful of times in past few decades, but with HJR3, the Hoosier state may join 31 other states which have passed constitutional bans on the recognition of same-sex unions. Wagner said this movement to amend states' constitutions in this way, which picked up steam in the late 1990s and 2000s, is out of line with how the democratic process usually works.

"Voters don't vote on practically anything," she said. "They rely on lawmakers to make those decisions. And they have on a number of very important issues. ... This is not something we do very often. This is certainly not something we with issues that are divisive as this one. ... We don't generally take protections away from people in our state's founding document, and that's essentially what we'd be asking our voters to vote on."

The fight over another voter-approved constitutional ban on same-sex marriage, California's Proposition 8, went all the way to the Supreme Court of United States last year, where it was struck down. Wagner said if HJR3 does pass the Indiana Senate and is approved by voters, it would be challenged almost instantly.

"It would almost certainly draw litigation the minute after the polls closed and the votes were counted," she said. "I can't imagine that a constitutional amendment at this point wouldn't draw a legal challenge. Now, if it was rolled back, if it was turned back and voters defeated it, it would be up to the legislature to come and continue the debate that everyone is having right now about marriage and legal protection for same-sex couples. That's where we think that debate belongs. And quite honestly, it's where most Hoosiers think the debate belongs. We're not big fans of changing our constitution. Over time we trust our lawmakers to have a reasoned debate

and if they think changes are warranted, they make the changes.”

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